

Khunthaa (Hermaphrodite)

- If the child has both a penis and a vagina then it is a *khunthaa* (hermaphrodite).
 - If one of the following occurs and not the opposite then it is criterion for stipulating the gender:
 1. He urinates from his penis then he is a male.
 2. She urinates from her vagina then she is a girl.
 3. If it urinates from both organs then the organ which dispenses the urine first will be considered.
 4. If it comes out from both at the same time it will be considered a *khunthaa mushkil*.
- The above criteria is when the *khunthaa* was a non-*baaligh*.

- When it matures (becomes *baaligh*) then the criteria changes:

In the following situations it will be counted as a male:

1. A beard emerges.
2. He get a wet dream like men get.
3. He has intercourse with a woman.

While in the following situations it will be considered a female:

1. Breasts grow,
2. Milk is produced in her breast,
3. She sees *haidh*,
4. She becomes pregnant,
5. Or intercourse is possible in her vagina.

If after reaching the age of maturity (15 lunar years or 14 years 6 months of the solar calendar) none of the above occur or some signs of both genders occur then it will be considered a *khunthaa mushkil*.

Laws of the *Khunthaa*

1. If the *khunthaa* was established as a male then all the laws pertaining to men will apply to him.
 - E.g. He will stand in the male's row in *salah*, will be the bread winner for the family.
2. If the *khunthaa* was established as a female then all the laws pertaining to women will apply to her.
 - E.g. She will pray with the ladies and wear hijab etc.
3. If the gender was not established rather it was considered a *khunthaa mushkil* then the most severe laws of each gender will apply *ihitiyaatan*.

الاصل في ذلك : ان الخنثى المشكل يؤخذ له في جميع اموره بالاحوط في امور الدين

Laws of the *Khunthaa Mushkil*

1. The *khunthaa mushkil* will have to be circumcised.
2. If it was circumcised when a minor then both a male or female doctor can perform the surgery.
3. If it is *baaligh* then a male doctor cannot be used since there is a possibility that the *khunthaa mushkil* is a woman.
 - A female doctor cannot be used since it may be a male.
 - So the *Fuqahaa* state that the *khunthaa mushkil* should purchase a female-slave who will then conduct the operation.
 - If it cannot afford her then its father should purchase the slave.
 - If his father also cannot afford one then the state will purchase one for it, and after she conducts the operation she will be resold and the monies replaced in the treasury.
4. It will have a separate row between the rows of the men and women is *jamat salah*.
5. Base on the *Muhazaat Masalah* in *Salah* the following will apply:
 - If it performs *salah* in the men's row then the men on its right and left will have to repeat their *salah*. Since it is possible that it is a woman so those men's *salah* will be invalid due to *muhaazaat*.
 - If it performs *salah* in the women's row then it has to repeat its *salah* since it is possible that it is a man and by performing *salah* beside a woman it has invalidate its own *salah*.
6. It should wear a *khimaar* in *salah* because if it is a woman then *salah* in a *topi* will not be valid.
 - N.B. The repetition of *salah* in the above *masaail* will be *mustahab* if the *khunthaa mushkil* is a minor and **wajib** if it is *baaligh*.
7. It will be makrooh tharimi for it to wear silk and jewelry.
8. In front of women its *awrah* will be that of a man.
9. In front of men its *awrah* will be that of a woman.
10. It is not allowed to be in seclusion with both, a non-*mahram* man or a non-*mahram* woman.
11. It is not allowed to travel without a male-*mahram*.
12. In Hajj it will wear sewn clothing like a woman, but pay the penalty of *jinayah* like if it was a man who had covered.
 - If it performs Hajj when a minor, then there will be no penalty even though it will wear the women's clothing.
13. It is not allowed to be present at the bathing and shrouding of a dead man or woman.
14. When it dies no male or female will bath it rather *tayammum* will be performed.
15. It will be shrouded in 5 cloths like a woman.
16. If it dies along with a man and a woman then when lining them up for *janazah salah* then the male will be closest to the imam and further towards the *qiblah* the *khunthaa mushkil* will be placed and then the woman.
17. When burying it a cloth will be placed over its grave as done with a woman.

18. In inheritance Imam Abu Hanifah considers it a woman in most scenarios and a male in a few.

N.B. In the *fiqh* books the scholars use the masculine pro-noun for the *khunthaa mushkil*. However, in English we have a neutral pro-noun “it”.

A Story of Imam Abu Hanifa’s Wit:

When the non-*baligh khunthaa* urinates from both organs at the same time Sahabain held the opinion that the organ from which most of the urine emerges will be taken into consideration. This is based on the principle: لاكثر حكم الكل. The law is based on the majority.

When Abu Yusuf mentioned this to Imam Abu Hanifah, he immediately retorted: ‘And which judge is going to sit there with a utensil and weigh the urine.’

Questions pertaining to *khunthaa mushkil*:

1. Can a *khunthaa mushkil* marry?
2. Can its mom take it on a journey (*shar’ee safar*) as her male *mahram*?
3. Since there are no slaves anymore how will the circumcision be performed?
4. Why are these two mentioned as separate criteria:
 - Breasts grow,
 - Milk is produced in her breast,
5. Why are these two mentioned as separate criteria:
 - She becomes pregnant,
 - Or intercourse is possible in her vagina.

References:

Quduri, Lubab, Jawharah Naiyyirah, Tasheh war Tarjeeh, Hidayah, Binayah, Fathul Qadeer, Durr Mukhtaar, Raddul Muhtaar